

AMENDED IN SENATE JANUARY 18, 2006

AMENDED IN SENATE JULY 5, 2005

AMENDED IN ASSEMBLY JUNE 2, 2005

AMENDED IN ASSEMBLY MAY 17, 2005

CALIFORNIA LEGISLATURE—2005—06 REGULAR SESSION

## ASSEMBLY BILL

**No. 1446**

**Introduced by Assembly Member Karnette**  
**(Coauthors: Assembly Members Cohn and Spitzer)**

February 22, 2005

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An act to amend ~~Section 2912 and 5028 of the Penal Code, relating to foreign prisoners~~ *Sections 12022.3 and 12022.8 of the Penal Code, relating to crime.*

### LEGISLATIVE COUNSEL'S DIGEST

AB 1446, as amended, Karnette. ~~Foreign prisoners. Crime.~~

Existing law ~~requires foreign-born inmates subject to the jurisdiction of the Department of Corrections to be informed that they may be eligible to serve their term of imprisonment in their country of citizenship. Existing law specifies other notification requirements in this regard, and similar notification to the consul of the inmate's nation of citizenship~~ *provides that for each violation or attempted violation of various sexual offenses, as specified, a person shall be punished by an additional term of imprisonment in the state prison of one, 2, or 3 years if he or she was armed with a firearm or deadly weapon, and by an additional 3, 4, or 10 years if a firearm or deadly weapon was used in the commission of the offense.*

This bill would ~~instead require that the department make that notification to inmates who are nationals of foreign countries. The bill~~

~~would require the Director of Corrections to inform the inmate that they may contact their consulate and would be required to ensure that if notification is requested, that the inmate's nearest consulate or embassy is notified without delay, as specified provide that this provision would also apply to a person who commits assault with intent to commit a sexual offense, as specified.~~

*Existing law provides that any person who inflicts great bodily injury on any victim in a violation or attempted violation of various sexual offenses, as specified, shall receive an additional term of imprisonment in the state prison of 5 years.*

*This bill would provide that this provision would also apply to a person who commits assault with intent to commit a sexual offense, as specified.*

*Because this bill would increase the penalty imposed for commission of a crime, this bill would impose a state-mandated local program.*

*The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.*

*This bill would provide that no reimbursement is required by this act for a specified reason.*

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: ~~no~~-yes.

*The people of the State of California do enact as follows:*

- 1     SECTION 1. Section 12022.3 of the Penal Code is amended
- 2     to read:
- 3     12022.3. For each violation of Section 220 involving a sexual
- 4     offense specified in that section, or for each violation or
- 5     attempted violation of Section 261, 262, 264.1, 286, 288, 288a,
- 6     or 289, ~~and~~ in addition to the sentence provided, any person shall
- 7     receive the following:
- 8     (a) A 3-, 4-, or 10-year enhancement if the person uses a
- 9     firearm or a deadly weapon in the commission of the violation.
- 10    (b) A one-, two-, or five-year enhancement if the person is
- 11    armed with a firearm or a deadly weapon. The court shall order
- 12    the middle term unless there are circumstances in aggravation or

1 mitigation. The court shall state the reasons for its enhancement  
2 choice on the record at the time of the sentence.

3 *SEC. 2. Section 12022.8 of the Penal Code is amended to*  
4 *read:*

5 12022.8. Any person who inflicts great bodily injury, as  
6 defined in Section 12022.7, on any victim in a violation of  
7 *Section 220 involving a sexual offense specified in that section,*  
8 *or a violation or attempted violation of paragraph (2), (3), or (6)*  
9 *of subdivision (a) of Section 261, paragraph (1) or (4) of*  
10 *subdivision (a) of Section 262, Section 264.1, subdivision (b) of*  
11 *Section 288, subdivision (a) of Section 289, or sodomy or oral*  
12 *copulation by force, violence, duress, menace, or fear of*  
13 *immediate and unlawful bodily injury on the victim or another*  
14 *person as provided in Section 286 or 288a shall receive a*  
15 *five-year enhancement for each such violation in addition to the*  
16 *sentence provided for the felony conviction.*

17 *SEC. 3. No reimbursement is required by this act pursuant to*  
18 *Section 6 of Article XIII B of the California Constitution because*  
19 *the only costs that may be incurred by a local agency or school*  
20 *district will be incurred because this act creates a new crime or*  
21 *infraction, eliminates a crime or infraction, or changes the*  
22 *penalty for a crime or infraction, within the meaning of Section*  
23 *17556 of the Government Code, or changes the definition of a*  
24 *crime within the meaning of Section 6 of Article XIII B of the*  
25 *California Constitution.*

26 ~~SECTION 1. Section 2912 of the Penal Code is amended to~~  
27 ~~read:~~

28 ~~2912. (a) Under its Foreign Prisoner Transfer Program, the~~  
29 ~~Board of Prison Terms shall devise a method of notifying each~~  
30 ~~inmate in a prison or reception center operated by the~~  
31 ~~Department of Corrections who is a national of a country with~~  
32 ~~which the United States has a prisoner transfer treaty that he or~~  
33 ~~she may be eligible to serve his or her term of imprisonment in~~  
34 ~~his or her country of nationality and of the substance of the~~  
35 ~~relevant treaty.~~

36 ~~(b) (1) The Board of Prison Terms shall actively encourage~~  
37 ~~each eligible foreign national inmate to apply for return to his or~~  
38 ~~her country of nationality as provided in prisoner transfer treaties~~  
39 ~~and shall provide quarterly reports outlining its efforts under this~~  
40 ~~section to the Chairperson of the Joint Legislative Budget~~

1 Committee and the chairperson of each fiscal committee of the  
2 Legislature.

3 (2) The Board of Prison Terms shall adopt the model program  
4 developed by the State of Texas for encouraging participation in  
5 the federal prisoner transfer program where appropriate.

6 SEC. 2. Section 5028 of the Penal Code is amended to read:

7 5028. (a) Upon the entry of any person who is a foreign  
8 national into a facility operated by the Department of  
9 Corrections, the Director of Corrections shall inform the person  
10 that he or she may apply to be transferred to serve the remainder  
11 of his or her prison term in his or her country of nationality. The  
12 director shall inform the person the he or she may contact his or  
13 her consulate and shall ensure that if this action is requested by  
14 the inmate, that the department shall facilitate contact with the  
15 inmate's nearest consulate or embassy without delay.

16 (b) Upon the request of a foreign consulate representing a  
17 country with which the United States is a party to an international  
18 agreement requiring consular notification of every arrest  
19 involving a national of that country, that is, a "mandatory  
20 notification country," the Department of Corrections shall  
21 provide the foreign consulate with a list of the names and  
22 locations of all inmates in its custody that have identified  
23 themselves as nationals of the country making the request.

24 (c) The Department of Corrections shall implement and  
25 maintain procedures to process applications for the transfer of  
26 prisoners to their countries of nationality under subdivision (a)  
27 and shall forward all applications to the Governor or his or her  
28 designee for appropriate action.